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MAILED

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OFFICE OF PETITIONS

In re Patent No. 7,767,436 :
Issued: August 3, 2010 :
Application No. 10/582,887 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: June 18, 2007 :
Dkt. No.: MTS5003USPCT :

This is a decision on the petition filed September 21, 2010 requesting that the patent term adjustment of 628 days for the above-identified patent be increased to 636 days. This matter is being properly treated pursuant to 37 CFR 1.705(d).

The petition is hereby **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,767,436 on August 3, 2010. The patent issued with 628 days of patent term adjustment. The instant request under 37 CFR 1.705(d) is timely filed. Patentee argues that the adjustment pursuant to 37 CFR 1.703(a) is 317 days. Patentee further argues that the adjustment pursuant to 37 CFR 1.703(b) is 339 days. Patentee further asserts a 20 day overlap between the (a) and (b) adjustments.

The petition has been carefully considered, but is not persuasive.

The period of adjustment pursuant to 37 CFR 1.703(a)(1) is 297 days, not 317 days. The application did not meet the requirement of 35 USC 371(f). Thus, the period of adjustment pursuant to 37 CFR 1.703(a)(1) commenced August 19, 2008, the day after the date that is fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371, and ended June 11, 2009, the date that the restriction requirement was mailed. See, 37 CFR 1.702(a)(1), 1.703(a)(2), and MPEP 1893.03(b).

The period of adjustment pursuant to 37 CFR 1.703(b) is 331 days. In an international application, the period of adjustment under 37 CFR 1.703(b) period is based on the failure of the Office to issue a patent within three years after the national stage commenced under 35 U.S.C. 371(b) or (f). See, 1.702(b). The priority date of this application is December 22, 2003. The requirements for early commencement were not met; accordingly, the national stage commenced in this application on June 22, 2006. The period of adjustment pursuant to 37 CFR 1.703(b) commenced June 23, 2009 and ended May 19, 2010, the day before the date that the request for continued examination (RCE) was filed. The period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the (b) delay period. See, 35 U.S.C. 154(b)(1)(B)(i).

In view thereof, no adjustment to the patent term will be made.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Receipt is hereby acknowledged of the \$200.00 fee required per 37 CFR 1.18(e).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

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